

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.8110 OF 2016

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ORDER:

This petition is filed for a writ of *Mandamus* declaring the action of the 3rd respondent in refusing to make entries in the records maintained by his office i.e., Book No.1, as illegal and arbitrary and for a consequential direction to the 3rd respondent to make entries in the records maintained by his office of the properties mentioned in the final decree dated 15.12.2014, passed by the I Additional Senior Civil Judge, Kakinada in IA.No.573 of 2000 in OS.No.202 of 1986 and issue Encumbrance Certificate to petitioners forthwith.

The case of the petitioners is that their family consists of 16 members and that they have vast moveable and immoveable ancestral properties in and around Kakinada. While so, some of their family members filed OS.No.202 of 1986 on the file of I Additional Subordinate Judge, Kakinada for partition of the suit schedule properties and the said suit was decreed by Judgment and Decree dated 20.02.1997 and a preliminary decree was passed in respect of the suit schedule property. Subsequently, an Advocate Commissioner was appointed to localize the property and to suggest mode of partition among the petitioners. Accordingly, the Court Commissioner visited the property and measured the same with the help of surveyor and divided the properties by metes and

bounds into 11 shares as per their entitlement and filed the report before the Court. Basing on the said report a final decree was passed. After passing of the final decree the petitioners paid necessary stamp duty and thereafter the final decree was engrossed on the Non Judicial Stamps worth Rs.14,50,600/- on 15.12.2014. It is also stated that after delivery of their respective shares, they filed EA.No.717/2015, 718/2015 and 719/2015 praying the Court to send the certified copies of decrees and delivery warrant, etc. to the 2nd respondent and to direct him to note their properties in the records maintained by their office book No.1, to enable them to obtain Encumbrance Certificate in respect of their properties which are shown in the delivery receipt. The said EAs were allowed by the Court on 23.12.2015. Pursuant to the orders passed by the I Additional Senior Civil Judge, Kakinada, certified copies of the above documents along with covering letter dated 04.01.2016, were sent directing the 3rd respondent to make entries in their record books, the respective shares of the parties as per the final decree. Though, the 3rd respondent received the said orders, is refusing to make entries in the records without specifying the reasons. Aggrieved by the same, present writ petition is filed.

When the matter is listed on 14.03.2016, learned Assistant Government Pleader for Revenue sought time for getting written instructions. When the matter is listed today, he produced written instructions dated

23.03.2016 issued by the Joint Sub-Registrar-I, Kakinada, East Godavari District, stating that the I Additional Senior Civil Judge, has sent only the certified copy of the final decree, but not the sale certificate and that there is a provision for registration of sale Certificate of immoveable property granted by the Courts but not the final decree for partition. It is further stated that there is no provision to note the properties in the office records and issue Encumbrance Certificate in respect of the said property, as the partition decree is a compulsory registerable document under Section 17 (1) (f) of Registration Act, 1908 as amended by the A.P.State amendment. Only Section 89(2) provides for registration of immoveable properties on the sale certificate issued by the Courts.

Heard learned counsel for the petitioners.

Section 17(1)(f) of the Indian Registration Act, 1908 reads as follows:

“17. Documents of which Registration is compulsory:-

(f) any decree or order or award or a copy thereof passed by a Civil Court, on consent of the defendants or on circumstantial evidence but not on the basis of any instrument which is admissible in evidence under Section 35 of the Indian Stamp Act, 1899 such as registered title deed produced by the plaintiff, where such decree or order or award purports or operate to create, declare, assign, limit, extinguish whether in present or in future any right, title or interest whether vested or contingent of the value of one hundred rupees and upwards to

or in immovable property.”

Even according to petitioners, they are not disputing that the final decree dated 15.12.2014 is registerable and for the same purpose they filed EAs and the Court below also allowed the same and sent the certified copies to the 3rd respondent along with covering letter. According to petitioners they are ready to pay registration fee also. Admittedly, after passing of the final decree the petitioners paid necessary stamp duty and thereafter the final decree was engrossed on the Non Judicial Stamps worth Rs.14,50,600/- on 15.12.2014.

Section 89(2) of the Indian Registration Act, 1908 reads as follows:

“89. Copies of certain orders, certificates and instruments to be sent to Registering Officers and filed:- (2) Every Court granting a certificate of sale of immovable property under the code of civil procedure, 1908 shall send a copy of such certificate to the registering Officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such certificate is situate, and such officer shall file the copy in his book No.1 (or get scanned).”

Admittedly, Section 89(2) of the Act has no application in respect of the present case, as petitioners are not claiming registration in pursuance of sale certificate issued by any authority.

It is to be seen that partition can be effected

either by way of executing partition deed or by way of filing a suit for partition. Petitioners approached the Court below by filing a partition suit and the Court below passed final decree and the same was engrossed on the Non Judicial Stamps worth Rs.14,50,600/- on 15.12.2014. Petitioners are also ready to pay registration fee. Even according to respondents final decree is a registerable document as per Section 17(1) (f) of the Indian Registration Act, 1908. It is not known why the respondents 2 and 3 are refusing to do the same by quoting Section 89(2) of the Act.

In view of the above, the writ petition is allowed subject to condition that the petitioners pay prescribed registration fee in respect of the subject property. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition shall stand closed.

A.RAJASHEKER
REDDY, J

28.03.2016
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